

REMARKS

Applicant's attorney wishes to express his appreciation to Examiner Gelin for his constructive comments during the telephonic interview conducted Wednesday, April 13, 2005. As discussed during the interview, the references cited in the January 13, 2005 Office Action do not disclose or suggest the subject matter defined by present claims 1-73. It was accordingly agreed during the interview that the present amendment, which had been submitted in draft form pursuant to the Accelerated Prosecution Procedure required by MPEP §708.02, VIII, be formally submitted for consideration by the Examiner.

The Examiner's indication that claims 6, 7, 11-15, 18, 25, 45, and 71 would be allowable if rewritten to incorporate the limitations of the base claim and any intervening claims is noted with appreciation.

As noted by the Examiner, claim 3 as originally presented was dependent on itself, instead of from claim 2, which was obviously intended. For the sake of clarity, claim 3 has been amended to depend from claim 2, instead of from claim 3. The Examiner has further observed that originally presented claims 67 – 70 were incorrectly numbered. He has thus renumbered those claims as claims 70 – 73. In the remarks following, all claims are addressed using the corrected numbering provided by the Examiner. In addition, the listing of claims set forth hereinabove incorporates the correct numbering, as established by the Examiner, as well as the amendments to claims 3, 25, 59, and 60 addressed hereinbelow. Applicant expresses appreciation for the Examiner's suggestion with respect to original claim 3; his recognition of the duplication of claim numbers in the original presentation; and his renumbering of the claims to advance prosecution.

For the sake of clarity, system claims 59 and 60 have been amended to depend from system claim 47, which was obviously intended, instead of depending from claim 27, which is a method

claim. Claim 25 has also been amended, for the sake of clarity, to recite a method wherein goods or services are delivered using the unique signature of the wireless device to locate the participating spectator who has ordered the goods or services.

The foregoing amendment is supported by the original specification; particularly at page 22, lines 12-16; page 27, line 6 – 8; page 26, lines 20 – 24; and page 34, lines 4-7. Consequently, no new matter has been added.

The present invention provides a method and system for audience members in attendance at a live spectator event, e.g. a sporting or other event at which a large number of patrons are gathered within a venue to witness and enjoy in real time a form of entertainment. Persons at this live event desirous of participating in the present method employ an interactive device, preferably a wireless device, to receive queries and respond thereto. The responses of the fans at the live venue are collected and analyzed, and the results presented to the fans. Preferably the system comprises the dissemination of advertising and promotional material, along with other forms of information that are useful and informative for the participants.

A live spectator event, held at a venue appointed for the gathering of large numbers of persons, provides a level of excitement induced by the collective participation by members of a crowd whose size is frequently measured in the thousands and, in some cases, may be over a hundred thousand fans. The live experience has particular characteristics and a level of excitement difficult to replicate for an individual person or a small number of persons watching a television broadcast, for example. The use of the present system markedly enhances the crowd excitement and experience of attending a major event, such as a professional sports match. Such an advantage is not realized by implementation of any system disclosed or suggested by any combination of the cited

references.

Moreover, the present method and system may be employed by any spectator present at the live event at his/her own initiative, e.g. by bringing a suitable wireless device, e.g. a cellular telephone, wireless PDA, or like device. In some embodiments of the invention, spectators alternatively may elect to participate by procuring suitable wireless devices made available at the venue for sale or rental.

The practice of the present invention affords a valuable business opportunity for potential advertisers and purveyors of goods or services, especially those thematically related to the live event. In the unique environment of a major event, e.g. a sporting event and especially a playoff or championship event, fans are highly likely to be caught up in the atmosphere of the moment and thereby more easily induced to purchase the proffered items. Persons remotely located or merely watching a broadcast of an event with a few friends are subject to distractions that compete for their attention to a far greater extent. As a result, advertisers are likely to regard such persons as less attractive prospects and less likely to be induced to purchase the advertisers' goods or services.

Objection has been raised to original claim 3 as being informal, the claim having been made dependent on itself instead of from claim 2, which was obviously intended. Claim 3 has thus been amended in accordance with the Examiner's suggestion to depend from claim 2. It is respectfully submitted that any basis for objection to claim 3 as being informal has thereby been obviated. Accordingly, reconsideration of the objection to claim 3 is respectfully sought.

Claims 1, 2, 8, 16, 17, 19-21, 26, 27, 29-37, 39-44, 46-52, 54, 57-65, and 70 were rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent 6,193,610 to Junkin in view of US Patent 5,801,754 to Ruybal.

Junkin discloses an interactive apparatus and method that allows participants to compete in an interactive game, such as a contest or sporting event. The event with which the participant may interact is broadcast live or previously taped but not aired. At-home participants can play along with the broadcast on a real time basis as a previously taped segment of the television show is aired. Interactive play may be accomplished by access to an on-line version of the game while the corresponding game show airs live or is rebroadcast to the participant for the first time on television. See Abstract, lines 1-11.

Ruybal discloses an interactive theater network system linking a plurality of motion picture theater auditoriums to permit live, interactive events to be conducted with theater audiences throughout the theater network. An origination site broadcasts information relating to the interactive event, and a plurality of network theater auditoriums are interactively linked with the origination site. Each network theater includes a full-motion picture projection system configured to receive the interactive event information from the origination site and present the information to the theater audiences. The interactive event information is transmitted from the origination site to the plurality of network theaters with a broadcast communication system. An audience response system provides interactive communication between the origination site and audience members from the network theaters. As part of the audience response system, a data collection system collects and processes data relating to the interactive event that is generated from the audience members. An interactive communication system also provides audio and video communications during the interactive event between audience

members across the network and the origination site. Business meetings, seminars, research sessions, training sessions, conferences, polling, sports viewing, "town hall" meetings, awards presentations, multi-media business presentations, and interactive distance learning are said to be interactive events for which the system may be used.

Applicant maintains that claims 1, 2, 8, 16, 17, 19-21, 26, 27, 29-37, 39-44, 46-52, 54, 57-65, and 70 are not obvious over the combination of Junkin and Ruybal.

To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine prior reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Applicant maintains that neither Junkin nor Ruybal discloses, teaches or suggests, whether singly or in combination, all of the claim limitations recited in independent claims 1, 46, and 47, let alone the further limitations in dependent claims 2, 8, 16, 17, 19-21, 26, 27, 29-37, 39-44, 48-52, 54, 57-65, and 70. In particular, applicant respectfully maintains that neither Junkin nor Ruybal discloses, teaches or suggests, whether singly or

in combination, any method or system entailing interactive participation by participating spectators attending a live spectator event held at a live event venue.

With respect to claims 1, 2, and 46-50, the Examiner has indicated that Junkin discloses a method for interactive audience participation at an event attended by a plurality of spectators. Each spectator is said to employ a wireless interactive device having capability to communicate. Applicant respectfully disagrees.

More specifically, Junkin does not disclose or suggest any method or system in which participants are physically present, that is to say, in attendance at a live spectator event within a venue. Rather, they are at home, viewing an event that may either be occurring in real time or be a taped and later rebroadcast, not occurring in real time. Significantly, the Junkin patent is entitled “Interactive Television System and Methodology.” The terms “at home viewer(s)” or “at home viewer/participant(s)” are expressly used at least 35 times in the Junkin disclosure to characterize the participants in the Junkin system and method. The term “viewer,” implicitly referring to a person located at home, i.e. not at a live event venue, and watching a television screen representation of an event and concurrently participating in the Junkin system, is found numerous additional times. Moreover, applicant is unable to locate even a single citation in Junkin that would suggest the physical, actual presence of a Junkin system participant at a live event; and the Examiner has not pointed to any disclosure in Junkin suggesting otherwise. The aforementioned “at home viewer” or “at home viewer/participant” is clearly not attending a live spectator event within a venue, as required by claims 1, 46, and 47 (and claims 2-45 and 72-73 depending on claim 1), as amended. In particular, the “at-home” participants using the Junkin system are not gathered to witness and enjoy in real time any form of entertainment that is occurring at a venue[] associated with

organized gatherings of large numbers of people that applicant delineates in the specification, e.g. at page 7, lines 3 – 4 and 10. The users of the Junkin system do not share the experience of attending a live event, which in some instances may draw tens of thousands of fellow attendees. The disparate nature of the respective experiences of fans attending a live event as opposed to “at-home viewers” is recognized by the present specification, e.g. at page 6, lines 4 – 10, which expressly contrasts the experience of spectators at a live event and those “who passively view or hear broadcast coverage at home or another remote location” (page 6, lines 7 – 8). The “at-home” users of the Junkin system do not encounter “patron entry points in the venue” (page 10, lines 17 – 18) or concession stands (page 5, line 10) that are frequently associated with the venues within which large live spectator events are held. They are not “caught up” by the roar of the crowd, in the “electrified atmosphere” attending participation at live events.

Far from disclosing or suggesting the present invention, Junkin teaches away from the invention of applicant’s claims 1 – 73, through repeated emphasis that the wireless interactive devices used in his system are operated by participants from their homes. As a result, they inherently are at a location remote from the venue at which the live spectator event is occurring.

Recognizing that Junkin fails to specifically teach any method or system wherein spectators are present at a live spectator event and participate in a contest using a wireless device, the Examiner has further cited Ruybal. Pointing to col. 4, lines 44 – 58, the Examiner alleges Ruybal to “teach[] audience participation at a live event.” Applicant respectfully disagrees. Instead, Ruybal discloses that participants are present at one or more network theaters, which are sites that are distinguished from, and physically removed from, an “origination site.” See col. 4, lines 46-47. Applicant

maintains that nothing in the passage cited by the Examiner or elsewhere in Ruybal contemplates any system in which any audience members are physically present at the origination site. At best, the origination site may be a television studio at which a presenter conducts a seminar which is conveyed to audiences physically situated at theaters across a network (col. 3, lines 46 – 49). The persons at the theaters of theater network system 10 (line 43) are said to be “remote audience members” (col. 4, lines 63 – 64). It is respectfully submitted that the skilled artisan would not regard a “remote audience member” as being a person at any live spectator event, as required by claims 1, 46, and 47. Keypads are said to be provided only to persons at each network theater auditorium (col. 7, lines 18 – 20), such network theater auditoriums being distinct from the origination site (see Fig. 4 and col. 3, lines 50 – 52). While Ruybal describes audiences at the remotely located network theater locations as being participants in an interactive event, such audience members are submitted not to be the spectators attending a live spectator event within a live event venue required by applicant’s claims 1, 46, and 47, because they are remotely located.

Accordingly, far from supporting the Examiner’s contention that Ruybal teaches audience participation at a live event, the foregoing disclosure of Ruybal is submitted to specifically teach away from applicant’s requirement that the spectators be present at a live spectator event held at a live event venue. The Federal Circuit has ruled it improper to combine references in an obviousness rejection when one reference teaches away from combination with another reference. “[W]e conclude that Sharon teaches away from a proposed combination with McFee...Accordingly, the Board’s combination of Sharon with McFee to reject the disputed claims was clear error.” (*In re Rudko*, Civ. App. No. 98-1505, slip op. at 5-6 (Fed. Cir. May 14,

1999) (unpublished).] Applicant respectfully submits that this holding renders improper the proposed combination in the instant matter.

It is thus submitted that even in combination, Junkin and Ruybal do not render obvious claims 1, 46, and 47, and claim 2 dependent from claim 1 and claims 49-50 dependent from claim 47.

Furthermore, applicant respectfully traverses the Examiner's proposed motivation for combining Ruybal with Junkin ("to allow a plurality of motion picture theater auditoriums to be interactively linked so that live, interactive events can be conducted with large theater audiences throughout the theater network") as being nothing more than a paraphrase of Ruybal's col. 9, lines 47 – 55. Such an objective is disclosed as being inherently accomplished by the Ruybal system, and no further evidence has been adduced by the Examiner that would point to the need or desirability of any modification. The Ruybal function, wherein system participants are located in plural venues, inherently negates the advantage enjoyed by participants in the instant method, who are located within a single venue, and who therefore experience the live spectator event in an "altogether" way. The Examiner has not pointed to any deficiencies in the Junkin system that would motivate one of ordinary skill in the art at the time of the present invention to combine Junkin with Ruybal. Furthermore, it would inherently be impossible to implement the Ruybal teachings in those implementations of Junkin that operate using taped program content that is not occurring in real time.

Moreover, modifying the Junkin system in the manner proposed by the Examiner would eliminate an essential and intended Junkin system function, namely the provision of an at-home entertainment. The Federal Circuit has clearly forbidden the combination of references that would result in the inoperability of the invention of the primary reference. ("If when

combined, the references 'would produce a seemingly inoperative device,' then they teach away from their combination." *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 52 USPQ 2d 1294, 1298 (Fed. Cir. 1999) (quoting *In re Sponnoble*, 160 USPQ 237, 244 (C.C.P.A. 1969))).

With respect to claim 8, the Examiner has pointed to Ruybal as purportedly teaching the collection of demographic characteristics of at least a portion of the spectators. Applicant is unable to identify any disclosure in the cited passage, col. 2, line 53 to col. 3, line 6, that refers to any demographic characteristic, such as the age or gender of the participant, as set forth in the specification page 23, lines 3-6. Applicant accordingly traverses the rejection and requests that the Examiner withdraw the rejection in the absence of a citation that substantiates his position and identifies the pertinent disclosure in the cited references, as required for compliance with the requirements of MPEP 706.02(j) ["The examiner should set forth in the Office Action: (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, 166 USPQ 406, 407 n. 3 (CCPA 1970)."] and 37 CFR 1.104(c)(2) ["When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."].

With respect to claims 16 and 17, the Examiner has particularly pointed to col. 2, lines 26-44 and col. 8, lines 6-64 of Ruybal as purportedly teaching the relaying of informational items. However, applicant is unable to locate in either cited passage any disclosure that such informational items are transmitted to a wireless interactive device for output using the user output interface, as recited by claim 16, the feature thereby

also being inherited by claim 17.

With respect to claims 19-21 and 26, the Examiner cites col. 8, lines 6-63 and col. 9, line 37 to col. 10, line 65 of Ruybal as further teaching querying comprising a conte[s]t , game, or opinion poll. However, it is submitted that such disclosure, while describing generally a form of querying, does not overcome the lack of disclosure of the features of claim 1, from which claims 19-21 and 26 depend.

With respect to claims 27 and 58, the Examiner has pointed to col. 8, lines 37 – 44 of Junkin as teaching wireless communication transmitting and receiving using at least one transmission selected from the group consisting of radio, microwave, and satellite transmissions. As set forth hereinabove in connection with the rejection of claims 1 and 47, it is submitted that Junkin in view of Ruybal fails to disclose any system wherein participants are located at a live spectator event within a venue, as required by present claims 1 and 47, from which claims 27 and 58 respectively depend. Claims 27 and 58 are therefore submitted to be patentable over Junkin in view of Ruybal for at least the same reasons.

With respect to claims 29 and 56, the Examiner has cited col. 2, lines 21 - 25 and 57 – 59 of Junkin as teaching a wireless interactive device that is Internet enabled and communicates therewith. Significantly, cited line 25 describes the user's interactive play as occurring "as the taped show airs on television," rendering such activity outside the scope of the method of claim 1 and the system of claim 47. As set forth more fully hereinabove in connection with the rejection of claims 1 and 47, a user presented with a taped show airing on television is inherently not a spectator attending a live spectator event within a venue, as required by present claims 1 and 47, from which claims 29 and 56 respectively depend. Accordingly, lines 21 – 25 are submitted to teach away from the

instant claims. Likewise, the passage immediately preceding lines 57 – 59 recites problems with a telephone system as being incapable of handling mass numbers of callers (e.g., see line 47). Such teaching is submitted to teach away from the present system, which in one aspect employs cellular telephones as wireless, interactive devices. Moreover, the cited passage at line 57 describes an Internet-based system as being an alternative to a system using a wireless interactive device, whereas claims 29 and 56 call for the present wireless interactive device to additionally have Internet capability. Applicant thus maintains that the features of claims 29 and 56 are not disclosed or suggested by the cited passages, precluding a proper finding of obviousness.

With respect to claims 30 – 32, the Examiner has pointed to various features of a user interactive device that are said to be disclosed by Ruybal. As set forth above in connection with the rejection of claim 1, from which claims 30 – 32 depend, the combination of Junkin and Ruybal fails to disclose or suggest any method in which participants are physically present at a live spectator event within a venue. Therefore, it is submitted there inherently cannot be any disclosure of persons physically present and using any device delineated by claims 30-32, even if *arguendo* such a device were disclosed by Junkin and Ruybal apart from its use by such a participating spectator. Accordingly, claims 30 – 32 are submitted to be patentable over the combination of Junkin and Ruybal.

With respect to claims 33-36, 39, 40, 51, 52, and 62-65, the Examiner has pointed to col. 2, lines 60-67 of Junkin as allegedly teaching the querying of spectators as being accomplished by at least one display visible to the spectators. Applicant respectfully disagrees. For the reasons set forth in greater detail hereinabove, applicant maintains that Junkin method contemplates only the participation of persons watching a television

broadcast, whether a real-time broadcast or a tape-delayed replay of an event. No person actually present in an event venue in which a live event is occurring is ever disclosed or suggested as a participant in any Junkin method. Accordingly, applicant submits that the Examiner's inference that there is a display located at a live event venue and seen by spectators at such location cannot be substantiated and represents impermissible hindsight reconstruction based on applicant's own disclosure, mooting the alleged basis for the rejection of claims 33-36, 39, 40, 51, 52, and 62-65.

Moreover, while claim 33 (and claims 34-35 dependent thereon) and claim 62 (and claims 63-65 dependent thereon) require the querying step to be accomplished by at least one display visible to the participating spectators, such a feature does not appear in claims 36, 39, 40, 51, and 52. Applicant respectfully submits that the Examiner's proposition that Junkin teaches the querying of spectators using a visible display is inapposite to the features recited by claims 36, 39, 40, 51, and 52. As a result, there is not an identified basis on which an obviousness rejection of said claims could properly be predicated. The Examiner is respectfully requested to withdraw this rejection in the absence of disclosure that substantiates his position.

With respect to claims 37 and 41, it is said that Junkin in view of Ruybal teaches all the limitations above, with col. 8, lines 10-30 of Ruybal being further cited as allegedly teaching a querying step accomplished by a message transmitted by the wireless communications system to the interactive device and output by the user output interface. As set forth hereinabove in greater detail, applicant respectfully maintains that neither Ruybal nor Junkin entails any participants physically present at a live event venue in which a live event is being conducted. Accordingly, it is submitted that the Examiner's identification of the display of any information purportedly found in Junkin or Ruybal as

being applicant's required dissemination of information to a participating spectator at a live event venue is hindsight reconstruction. More specifically, neither Junkin nor Ruybal contemplates any such participating spectator at a live event venue. Accordingly, applicant maintains that inherently, neither reference can be regarded as teaching the dissemination of information to a person who does not exist in the framework of the Junkin or Ruybal systems.

Regarding claim 42, the Examiner has stated that Junkin in view of Ruybal teaches all the limitations above, with col. 9, lines 3-6 of Ruybal being further cited as allegedly teaching the offering of a special-purpose wireless interactive device for sale or rent. Applicant respectfully points out that claim 42 calls for the offering of the devices "for sale or rent to said persons." (Emphasis added). The antecedent basis for "said persons," which is found at line 2 of claim 1, recites "persons at said [live event] venue." As set forth in connection with the rejection of claims 37 and 41, neither Junkin nor Ruybal contemplates persons present at "a live event venue" as required by claim 42. Moreover, it is submitted that the cited passage discloses the renting of equipment by a client who intends to provide the entire network system for interactive events, rather than the renting or sale of the present interactive device for use by any spectator.

Accordingly, it is submitted that the cited passage falls short of any disclosure or suggestion of the subject matter of claim 42.

Regarding claim 43, the Examiner has stated that Junkin in view of Ruybal teaches all the limitations above, with col. 7, lines 46-61 and col. 9, lines 47-51 of Ruybal being further cited as allegedly disclosing a live spectator event comprising multiple activities occurring simultaneously in different locations "within a venue." Applicant respectfully disagrees. While Ruybal admittedly discloses activity occurring at a plurality of theaters,

such theaters are inherently situated in geographically disparate locations, and so would not properly be regarded by the skilled artisan as being multiple activities occurring in different locations “within a venue” as recited by claim 43. Instead, the activities referenced are occurring at multiple, different venues. The multiple locations taught by Ruybal are not within a single venue, nor are there multiple activities occurring simultaneously in the different network theaters of Ruybal. Rather, a common activity is being carried out in each network theater simultaneously. For example, a seminar may originate at an origination site, with the audience being dispersed among multiple locations or venues and participating from those venues. There is no disclosure, for example, of different seminars being seen by different audience members. By way of contrast, applicant provides the example of a tennis tournament which occurs in a single venue having multiple tennis courts. Different matches (i.e., different activities), typically occur simultaneously. Each match is played independently, and the present method, as recited by claim 43, permits spectators located at one of the matches but still within the overall event venue to be apprised of events in the match occurring on other courts.

Accordingly, it is respectfully submitted that Ruybal falls short of any disclosure or suggestion of the subject matter of claim 43.

Regarding claim 44, it is alleged that Junkin in view of Ruybal teaches all the limitations, given that more than one spectator is present in the system and an exchange connection is present to permit communications between spectators and the provider. As set forth hereinabove, applicant maintains that neither Junkin nor Ruybal discloses or suggests any spectators present at a live event occurring in a live event venue. As a result, the features of claim 1 inherited by claim 44 are not satisfied. Furthermore, the

Examiner has not pointed to any teaching in Junkin or Ruybal that discloses or suggests plural providers of wireless services, as further required by claim 44. Accordingly, it is respectfully submitted that no case of *prima facie* obviousness has been established with respect to claim 44.

Regarding claim 54, it is alleged that Junkin in view of Ruybal teaches all the limitations, with col. 8, lines 10-40 said further to teach at least one distributed receiving server in communication with the central processor and the wireless communication system. Applicant is unable to locate within the cited passage of Ruybal any mention of an order processing server, let alone a disclosure or suggestion of an order processing server receiving orders for goods and services entered by the participating spectators or the communication of such orders to a provider for order fulfillment, as recited by claim 54. Absent such disclosure or suggestion, as well as the more fundamental lack of any disclosure or suggestion of the features of claim 47 inherited by dependent claim 54, it is submitted that no basis has been established on which *prima facie* obviousness could be predicated with respect to claim 54.

Regarding claim 57, the Examiner has pointed to Junkin and particularly to Ruybal as teaching the broadcasting of informational items appointed for receipt by the wireless interactive device. Col. 6, lines 10 – 14; col. 15, lines 9 – 22; and col. 16, lines 17 – 20 are cited. Reference to Junkin was apparently intended, since Ruybal extends only to col. 14. Applicant respectfully points out that the cited passages in Junkin suggest information that is broadcast to viewers located in their homes, not spectators at a live spectator event within a venue, as delineated by present claim 47, from which claim 57 depends. It is thus submitted the cited teachings fall short of establishing a basis on which an obviousness rejection of claim 60 could properly be predicated.

With respect to claims 59 and 61, the Examiner has further pointed to teachings in Ruybal concerning a distributed receiving server and a computer program in a central processor. As set forth hereinabove, applicant respectfully submits that Junkin and Ruybal fail to disclose or suggest the presence of spectators at a live spectator event in a venue, as required by claim 47, from which claims 59 and 61 depend.

Moreover, the features of a distributed server and a computer program are not even present in claim 59. As a result, it is submitted that the basis on which the Examiner has deemed claim 59 obvious over Junkin and Ruybal is inapposite. Withdrawal of the rejection of claim 59 is respectfully requested in the absence of any citation properly supporting the foregoing statement of rejection.

Regarding claim 60, the Examiner has further pointed to Ruybal's purported teaching at col. 7, line 44 to col. 8, line 9 of a computer program stored in a central processor that is operative to process answers entered by the spectators into results. As set forth hereinabove in connection with the rejection of claim 47, on which amended claim 60 depends, applicant submits that required features of claim 47 are not disclosed or suggested by Junkin and Ruybal. Claim 60 is therefore submitted to be patentable over Junkin and Ruybal for at least the same reasons as claim 47.

Regarding claim 70, the Examiner has cited col. 6, lines 10 – 41 of Junkin as teaching localization circuitry. Applicant is unable to locate within this passage any disclosure or suggestion of any localization circuitry that permits determination of the location of a wireless device. For example, no suggestion is made of any technique by which a fan, who may have move to a concession stand, restroom, or other location within a stadium, golf course, or the like, while carrying his/her wireless interactive device may be located, e.g. for the delivery of merchandise items or prizes. Applicant, on

the other hand, discloses such a function, e.g. at page 21, lines 5 – 7. The Examiner is respectfully requested to withdraw this rejection, there being no identified teaching that substantiates his rejection.

In view of the amendment to claim 3, 59, and 60, and the foregoing remarks, applicant submits that even in combination, Junkin and Ruybal fail to disclose or suggest the method of claims 1 and 46 or the system of claim 47, or claims 2, 8, 16, 17, 19-21, 26, 27, 29-37, 39-44, 48-52, 54, 57-65, and 70 dependent thereon.

Accordingly, reconsideration of the rejection under 35 U.S.C. 103(a) of claims 1, 2, 8, 16, 17, 19-21, 26, 27, 29-37, 39-44, 46-52, 54, 57-65, and 70 as being unpatentable over Junkin in view of Ruybal is respectfully requested.

Claims 3-5, 9, 22, 28, 53, 55, 67, 72, and 73 were rejected under 35 U.S.C. 103(a) as being unpatentable over Junkin in view of Ruybal and in view of U. S. Patent 5,916,024 to Von Kohorn.

Von Kohorn discloses a system and method for evaluating responses to broadcast programs, such as television programs. The system includes an instructional signal modulated onto a signal transmitted concurrently with the television program, or time-multiplexed with the television signal. See Abstract, lines 1-5. Thus, members of a home audience, such as viewers of a televised video game or quiz show, may receive two broadcasted signals. The first signal is the broadcast signal itself, which may be broadcast from a radio or television station to the listening or viewing audience (col. 3, lines 8-11). The second signal is a signal setting forth a task, such as answering one or more questions that may be viewed on a television screen and/or listened to over the radio or the audio portion of the television transmission.

The sole objective of Von Kohorn is clearly to provide interactivity for a person who is viewing or listening to a television or radio program at home. More specifically, Von Kohorn provides an interactive device for the viewer/listener of a broadcasted program. None of the embodiments of Von Kohorn suggests or discloses a system or method that may be employed at a live spectator event. A person using the interactive device of Von Kohorn is clearly not a spectator attending a live spectator event within a venue. Instead Von Kohorn discloses the use of broadcasted signals of the program to provide the at-home viewer with additional signals having certain interactive content.

Accordingly, it is submitted that Von Kohorn does not cure the deficiency of Junkin and Ruybal in not disclosing or suggesting any method or system for enabling interactive participation by spectators attending a live spectator event within a venue, as recited by present independent claims 1, 46, and 47, and claims 3-5, 9, 22, 28, 53, 55, 67, 72, and 73 dependent thereon.

The Examiner has indicated that Junkin in view of Ruybal teaches all the limitations of claim 3 except the step of disseminating a promotional message for monetary consideration from an advertiser, which is said to be known from Von Kohorn. For at least the reasons set forth hereinabove, applicants respectfully disagree that Junkin in view of Ruybal and Von Kohorn discloses all the limitations of present claim 1, from which amended claim 3 depends. In particular, none of the participants in any method disclosed or suggested by Junkin, Ruybal, or Von Kohorn is a spectator attending a live spectator event within a venue. Absent disclosure or suggestion of this feature, claim 3 is submitted to patentably define over the combined teachings of the cited references.

With respect to claim 4, Junkin in view of Ruybal is indicated to teach all the limitations except the transmission of indicia identifying the interactive device, which

feature is said to be known from Von Kohorn. With respect to claim 5, Von Kohorn is said to disclose a unique signature comprising indicia entered into the wireless interactive device using the user input interface thereof.

Even if such features of claims 4 and 5, were known *arguendo* from Von Kohorn, the lack of disclosure or suggestion of the practice of the method of claim 1, from which claim 4 depends, involving participation by participating spectators present at a live spectator event held at a live event venue, in Junkin, Ruybal, and Von Kohorn, whether taken singly or in any combination thereof, is submitted to render claims 4 and 5 patentable for at least the same reasons as claim 1.

Regarding claims 9 and 67 it is said that Von Kohorn teaches the distribution of coupons to viewers according to the listener or viewer's time zone (col. 31, line 38 to col. 32, line 7). The Examiner has proposed that such disclosure would motivate the skilled artisan to "implement the technique of Von [Kohorn] in order to equitably service viewers of different time zones." Applicant respectfully submits that any such disclosure falls far short of the selection of promotional messages based on demographic characteristics of the users as delineated by claims 9 and 67, there being no basis on which to presume that persons living within a given time zone share anything more than the most tenuous demographic characteristics.

Moreover, applicant respectfully points to the context in which the aforementioned passage is located. In particular, col. 31, lines 26-37 disclose that a given television program is often broadcast over an extended geographical area (e.g. the United States or Europe) that may span more than one time zone. Often, the same program is broadcast at different actual times but at the same or related local time, according to the time zone. Accordingly, Von Kohorn discloses that a contest predicated on content broadcast in one

time zone might be compromised by communication of critical information to a person in another time zone in which the given program will only be broadcast at a later actual time. Significantly, such a problem only arises for activities that do not occur in real time. Inherently, such a possibility cannot occur in the instance of a live spectator event transpiring in real time at a live event venue, as required by present claims 1 and 47, from which claims 9 and 67 respectively depend. That is to say, the problem solved in Von Kohorn by the feature on which the Examiner has relied is altogether different from the need to disseminate demographically targeted messages solved by the instant invention, as recited by claims 9 and 67. Accordingly, it is submitted that one of ordinary skill would lack any motivation to make the modification of the combined teachings of Junkin, Ruybal, and Von Kohorn that the Examiner has proposed.

With respect to claims 22, 53, 72, and 73, the Examiner has further pointed to Von Kohorn as disclosing the instant awarding of prizes. However, as set forth hereinabove, it is submitted that even in combination, Junkin, Ruybal, and Von Kohorn fail to disclose or suggest the subject matter of claims 1 and 47, from which claims 22, 53, 72, and 73 depend. Accordingly, claims 22, 53, 72, and 73 are submitted to be patentable over Junkin, Ruybal, and Von Kohorn for at least the same reasons as claims 1 and 47.

With respect to claims 28 and 55, Junkin in view of Ruybal is indicated to teach all the limitations except selection of the interactive device from the group consisting of cellular telephones, two-way pagers, wireless personal digital assistants, and wireless pocket PCs. As set forth hereinabove, it is submitted that none of the participants in any method disclosed or suggested by Junkin, Ruybal, or Von Kohorn is a spectator attending a live spectator event within a venue. This feature is required by present claims 1 and 47, from which claims 28 and 55, respectively depend. Accordingly, claims 28 and 55 are

submitted to be patentable over Junkin, Ruybal, and Von Kohorn.

In view of amendment to claim 3 and the foregoing remarks, it is submitted that claims 3-5, 9, 22, 28, 53, 55, 67, 72, and 73 are patentable over Junkin, Ruybal, and Kohorn.

Accordingly, reconsideration of the rejection of claims 3-5, 9, 22, 28, 53, 55, 67, 72, and 73 under 35 U.S.C. 103(a) as being unpatentable over the combination of Junkin, Ruybal and Von Kohorn is respectfully requested.

Claim 10 was rejected under Junkin in view of Ruybal, further in view of Von Kohorn, and still further in view of US Patent 5,794,219 to Brown.

Brown discloses a method of conducting an on-line auction that permits individual bidders to pool bids during a bidding session. The auction is said to be conducted over a computer network that includes a central computer, a number of remote computers, and communication lines connecting the remote computers to the central computer. A number of bidding groups are registered in the central computer, each bidding group having a total bid for the item being auctioned. Bids entered from the remote computers are received in the central computer, each bid including a bid amount and a bid designation. Each bid amount is contributed to the total bid of the bidding group indicated by the bid designation. The bidding group having the largest total bid at the end of the bidding session wins the item being auctioned.

However, applicant respectfully submits that Brown fails to cure the lack of disclosure or suggestion in any combination of Junkin, Ruybal, and Von Kohorn of the subject matter of claim 1, from which claim 10 depends. In particular, it is maintained that Brown fails to disclose or suggest any method for enabling interactive participation

by persons who are attending a live spectator event held at a live event venue. The Examiner has not pointed to any such teaching. Claim 10 is thus submitted to be patentable over the combination of Junkin, Ruybal, Von Kohorn, and Brown for at least the same reasons as claim 1.

Accordingly, reconsideration of the rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Junkin in view of Ruybal, in view of Von Kohorn, and further in view of Brown is respectfully requested.

Claims 23, 24, 68, and 69 were rejected under Junkin in view of Ruybal, in view of Von Kohorn, and further in view of US Patent 6,598,027 to Breen, Jr. et al.

Breen discloses systems, methods and computer program products for anonymously buying and selling regulated goods, such as agricultural chemicals, via auctions conducted over a computer network. A seller of regulated goods submits a request to the Web site of an intermediary to list the regulated goods for sale. The intermediary verifies that the seller is authorized to sell the regulated goods using information about the seller maintained by the intermediary. The intermediary also verifies that a bidder is authorized to purchase the regulated goods using information about the bidder maintained by the intermediary. The intermediary initiates delivery of the regulated goods from the seller to winning bidder(s) and initiates a transfer of funds from winning bidder(s) to a seller

It is respectfully submitted that Breen fails to cure the lack of disclosure or suggestion in any combination of Junkin, Ruybal, and Von Kohorn of the subject matter of claims 1 and 47, from which claims 23 and 24, and claims 68 and 69, respectively depend. In particular, it is maintained that Breen fails to disclose or suggest any method for enabling interactive participation by persons who are attending a live spectator event

held at a live event venue. It is noted that the Examiner has not pointed to any such teaching in Breen by way of which persons present at a live event are enabled to participate interactively, as required by present claims 1 and 47, from which claims 23, 24, 68 and 69 depend. Claims 23, 24, 68, and 69 are therefore submitted to be patentable over the combination of Junkin, Ruybal, Von Kohorn, and Breen for at least the same reasons as claims 1 and 47.

Accordingly, reconsideration of the rejection of claims 23, 24, 68, and 69 under 35 U.S.C. 103(a) as being unpatentable over the combination of Junkin, Ruybal, Von Kohorn, and Breen is respectfully requested.

Claims 1-5, 8, 9, and 16-73 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent 6,760,595. In order to expedite prosecution of this application, enclosed herewith is a Terminal Disclaimer in the form required by 37 CFR 1.321 (b). The Terminal Disclaimer includes a statement by the attorney of record that the evidentiary documents have been reviewed and certifying that, to the best of his knowledge and belief, title is in the Petitioner seeking to take action. As such, the Terminal Disclaimer is submitted to be in compliance with 37 CFR 3.73 (b), and is in the proper form required by 37 CFR 1.321. In view of the same, it is submitted that claims 1-5, 8, 9, and 16-73 should not be subject to rejection based on obviousness-type double patenting with U. S. Patent 6,760,595.

Accordingly, reconsideration of the rejection of present claims 1-5, 8, 9, and 16-73 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 of U. S. Patent 6,760,595 is respectfully requested.

Claims 6, 7, 11-15, 18, 25, 45, and 71 were objected to as being dependent upon a rejected base claim but were indicated as containing allowable subject matter. Applicant's attorney wishes to express his appreciation to the Examiner for his constructive comments in the Office Action and the indication that claims 6, 7, 11-15, 18, 25, 45 and 71 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


For the reasons set forth hereinabove, applicant submits that present claim 1, from which claims 6, 7, 11-15, 18, 25, 45, and 71 depend, patentably defines over the art applied. Accordingly, claims 6, 7, 11-15, 18, 25, 45, and 71 are submitted to be patentable for at least the same reasons. Reconsideration of the objection to claims 6, 7, 11-15, 18, 25, 45, and 71 and their allowance are, therefore, respectfully requested.

In view of the amendment to claims 3, 25, 59, and 60, the Terminal Disclaimer submitted herewith, and the remarks set forth above, it is submitted that the present application has been placed in allowable condition. Reconsideration of claims 1-73, as amended, together with the objection to claims 3, 6, 7, 11-15, 18, 25, 45, and 71, and allowance of this application are, therefore, earnestly solicited.

Respectfully submitted,

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